HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 14919 OF 2005

DATED: 13.12.2005

Between:

Mohd. Abbas

… Petitioner

and

The Employees Provident Fund
Organization, represented by its
Regional Commissioner, Barkatpura,
Hyderabad and others.
… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.14919 OF 2005

ORAL ORDER:

Heard Mr. A.K. Jaya Prakash Rao for the petitioner, Mr. B. Narasimha Sarma for the respondents 1 and 2 and Mr. P. Narahari Babu for the 3rd respondent.

Petitioner retired as a Foreman in the employment of the 3rd respondent-company. He joined service of the said company in 1960 and opted for the pension scheme in 1971. Ever since his entry into service in the 3rd respondent company, provident fund and pension contributions were deducted from his salary. He made contributions to the pension fund till 31.5.1996, the date on which he attained the superannuation age of 58 years. The petitioner had a provident fund accreditation with the respondents 1 and 2 bearing No. AP/1511/283. Admittedly, the respondents 1 and 2 received contributions from the petitioner up to 31.5.1996 through the 3rd respondent month after month, without default or hiatus.

After the petitioner's retirement from the service of the 3rd respondent w.e.f 31.5.1996, it is his grievance, the respondents 1 and 2 have denied him family pension, on the ground that there was some inconsistency with his date of birth as available from the records of the respondents 1 and 2. The 3rd respondent-employer addressed a letter to the 2nd respondent on 28.10.2004 informing the respondents 1 and 2 that the petitioner's date of birth is 2.5.1938 and he had attained the age of superannuation on 31.5.1996. The 3rd respondent also intimated the respondents 1 and 2 that pension fund/pension contributions on behalf of the petitioner were remitted to the respondents 1 and 2 up to 31.5.1996, the date of the petitioner's superannuation.

The respondents 1 and 2 thereupon assumed that the 3rd respondent was pleading for altercation of his date of birth in their records. This was not however true. What the 3rd respondent was sensitizing the respondents 1 and 2 was that the petitioner's date of birth was 2.5.1938 and he had retired on 31.5.1996.

According to the affidavit filed on behalf of the respondents 1 and 2, the 3rd respondent-employer had in Form-3 (EPF) furnished the petitioner's date of birth as 2.5.1931. It is also stated that the petitioner had submitted a claim for pension in Form-10 (D) under the Employees Pension Scheme, 1995 but as per the service record furnished by the employer, since the petitioner had crossed the age of 60 years in the year 1991 itself, these forms were returned by office letters dated 22.5.2003 and 2.12.2004 advising the petitioner to re-submit Form 10(C) for withdrawal of benefits (other than the pensionary benefits). The petitioner re-submitted his claim for pension asserting that he had attained the age of 58 years on 31.5.1996 and that his date of birth is 2.5.1938 and not 2.5.1931, as wrongly perceived by the respondents 1 and 2. At that stage, the Writ Petition is filed.

It is not in dispute that the provident fund contributions of the petitioner were remitted month after month by the 3rd respondent and accepted and credited to the fund by the respondents 1 and 2, up to 31.5.1996. It is also not in dispute that while forwarding the lumpsum amount to the respondents 1 and 2 towards the pension fund contributions payable by the 3rd respondent, the names of each of the employees in respect of which the contributions are made are also forwarded to the respondents 1 and 2. The respondents 1 and 2 should therefore have awoken to the fact that a pension contribution was being made in respect of the petitioner, who according to the records was about 65 years old, a wholly unnatural event in any realm of public employment in respect of which provident fund contributions are made.

The counter affidavit is silent as to what was the date of birth of the petitioner submitted at the time of opening of the pension fund, nor does the counter affidavit of the respondents 1 and 2 deal with the aspect as to why the pension fund contributions in respect of the petitioner were accepted without murmur or demur by the respondents 1 and 2 even beyond the year 1991, when even according to these

respondents the petitioner would have attained the age of 60 years. Even if we go by the contentions of these respondents, there appears to be clearly collaborative negligence of the respondents 1 and 2 and of the respondent No.3 and for this conjoint negligence, the petitioner cannot suffer.

Admittedly, the petitioner is entitled to the benefits of voluntary pension introduced in the year 1995 at a time when he was legitimately in service. That legitimate entitlement of the petitioner cannot be denied on account of the lethargy, indolence and negligence of the respondents 1 and 2 to which a contribution is made by the erroneous information furnished by the 3rd respondent.

By a proceeding dated 3.5.2005, the 2nd respondent addressed the 1st respondent as though a change of the date of birth of the petitioner was being solicited. To this, by an order dated 24.5.2005, the 1st respondent responded rejecting approval for the request for change of date of birth. Such are the ways of the respondents 1 and 2. Never was a request of the change of date of birth of the petitioner proposed by the 3rd respondent-management or solicited by the petitioner. What the respondents 1 and 2 were being repeatedly informed was that the actual date of birth of the petitioner was 1938 and not 1931 as erroneously recorded in the registers of the respondents 1 and 2.

In the circumstances above, the petitioner shall be entitled to the relief as claimed. The proposal sent by the 2nd respondent to the 1st respondent in proceedings bearing No. AP/1511/SAO/KKP/DOB/AG-3(7)/96 dated 3.5.2005 and the order of the 1st respondent bearing No.AP/1511/SAO/KKP/F.10D/AG-3(7)/135 dated 24.5.2005 are irrelevant and misconceived and are quashed.

The respondents 1 and 2 shall without fail or demur and with utmost expedition pay the petitioner the benefits of family pension including arrears with effect from the date of his retirement on 31.5.1996, within four weeks from the date of

receipt of a copy of this order and shall continue to pay the same. On failure of the respondents 1 and 2 to pay such arrears to the petitioner within the aforesaid period of 4 weeks, the respondents 1 and 2 shall be liable to pay the petitioner interest at 12% per annum simple calculated from the date of the petitioner's retirement till the date of payment. In any event, the respondents 1 and 2 shall pay the arrears of family pension benefits to the petitioner on or before 28.2.2006. If the payment of this family pension to the petitioner entails any un-programmed financial burden on the respondents 1 and 2, the respondents 1 and 2 shall be at liberty to institute disciplinary proceedings against such of its employees who have been responsible for this fiasco. The respondents 1 and 2 shall also be at liberty to pursue appropriate remedies against the 3rd respondent for any financial commitment resulting from the wrong information furnished by the 3rd respondent.

On the analysis above, the writ petition is allowed. There shall be no order as to costs.

GODA RAGHURAM, J

Date: 13.12. 2005

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